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CHARLES ELMORE CROP
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 401.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

BANK OF COMMERCE AND SAVINGS, THE SECURITY SAVINGS AND COMMERCIAL BANK, THE CITY BANK OF WASHINGTON, MCLACHLEN BANKING CORPORATION, ANACOSTIA NATIONAL BANK OF WASHINGTON, INDUSTRIAL BANK OF WASHINGTON, INC., THE CITIZENS BANK OF WASHINGTON, *Respondents*.

BRIEF FOR RESPONDENT THE CITIZENS BANK OF WASHINGTON IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Washington, D. C.,
November 23, 1949.

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OPINIONS BELOW.

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 476) has not been reported officially. It was filed May 31, 1949 in Docket No. 9840, and is to be found in 176 F. 2d 624 and at par. 84-007 of the District of Columbia Tax Reporter published by

Commerce Clearing House, Inc. The opinion of the Board of Tax Appeals for the District of Columbia (R. 22-27) has not been reported officially but is to be found in Volume 76 of The Washington Law Reporter at pp. 633 *et seq.* It is to be found also in par. 84-004 of the District of Columbia Tax Reporter published by Commerce Clearing House, Inc.

STATEMENT OF THE CASE.

This case involves nothing but a local tax upon a local bank. The case involves only, and is concerned simply with, the construction of a local District of Columbia taxing statute. Insofar as this Respondent, The Citizens Bank of Washington, is concerned one question and only one question is presented by this case. That question is solely and simply whether for the tax fiscal year ended June 30, 1945 this Respondent, The Citizens Bank of Washington, is taxable as *"an incorporated savings bank paying interest to its depositors"* under the provisions of the Act of April 28, 1904, 33 Stat. 564, ch. 1815, sec. 2, fifth paragraph (second paragraph, Sec. 47-1703, D. C. Code, 1940 ed.).

There is nothing whatever in this case to bring it within any of the classes of cases to review which this Court grants certiorari. The Board of Tax Appeals for the District of Columbia upon the basis of the evidence presented to the Board determined that this Respondent, The Citizens Bank of Washington, was an incorporated savings bank within the meaning of the local taxing act and subject to taxation as such. (R. 26; 440.) Upon review of the Board's decision, the United States Court of Appeals for the District of Columbia Circuit affirmed the Board's decision. (R. 483.) Neither the Court of Appeals nor the Board decided any question of general importance nor any question of substance relating to the construction or application of the Constitution or a treaty or statute of the United States which has not been but should be settled by this Court. There is nothing in the Petition for Certiorari, in the brief

in support thereof, or elsewhere, to show that the Court of Appeals did not give proper effect to an applicable decision of this Court.

Respondent The Citizens Bank of Washington (hereinafter sometimes referred to as "Citizens") was incorporated in 1925 under the laws of the District of Columbia (Mar. 3, 1901, 31 Stat. 1284, ch. 854, sec. 605; June 30, 1902, 32 Stat. 533, ch. 1329; Sec. 29-201, D. C. Code, 1940 ed.) as "The Morris Plan Bank of Washington." In 1946 its name was changed to "The Citizens Bank of Washington". Its objects and purposes, as stated in its certificate of incorporation were to promote and encourage frugality and savings and to do a general savings business. In 1947 its stockholders placed it in voluntary liquidation. (R. 436.)

Citizens upon organization in 1925 acquired the business of the Fidelity Savings Company. (R. 184.) On June 30, 1944 Citizens had 9,602 regular savings accounts and in addition thereto 8,276 assigned savings accounts, which in the aggregate exceeded $3,500,000. (R. 436.) Citizens actively solicited and advertised for savings accounts. It spent about $30,000 per year for advertising, about one-half of which was spent in advertising for savings accounts. (R. 437.) During the years 1940 to 1945, inclusive, Citizens had regular savings deposits which exceeded its demand deposits, excluding War Loan deposits, except for the period during which War Loan campaigns were at their height, that is, for the year 1943 and the first half of the year 1944. For the period as a whole, total savings deposits far exceeded total demand deposits. (R. 467-468.) The earnings of Citizens were derived for the most part from interest on loans. (R. 470.) Its principal efforts were directed toward increasing its savings deposits and lending the money thus obtained, specializing in "consumer credit loans." (R. 445.) Its rates of interest paid upon savings accounts were constantly maintained at points greater than those paid by any other bank in the District of Columbia. (R. 451.)

For twenty years following the incorporation of Citizens, the Assessor of the District of Columbia assessed gross earnings taxes against Citizens as an incorporated savings bank by computing the tax at the rate of 4% upon gross earnings less interest paid to depositors. (R. 19; 26.) In the fall of the calendar year 1946, after the decision in the case of *Hamilton National Bank* v. *District of Columbia*, 81 U. S. App. D. C. 200, 156 F. 2d 843, the taxing authorities of the District of Columbia asserted for the first time that Citizens was not an incorporated savings bank and that it should be taxed under Sec. 47-1701, D. C. Code, 1940 ed. (R. 438.) Accordingly, on October 17, 1946, the Assessor made an additional assessment of gross-earnings tax against Citizens for the tax fiscal year 1945 based upon computation of tax at the rate of 6% without deduction for the interest paid savings depositors. (R. 439.) Citizens paid the additional tax under protest and filed an appeal with the Board of Tax Appeals for the District of Columbia. (R. 439.) The Board concluded that Citizens was an incorporated savings bank within the meaning of the second paragraph of Sec. 47-1703, D. C. Code, 1940 ed., (R. 21; 26.) and decided that the additional assessment should be cancelled (R. 440). The District of Columbia appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 9840). The Court of Appeals in its opinion filed May 31, 1949 said that the Board of Tax Appeals was justified in holding that Citizens was taxable under Sec. 47-1703 as an incorporated savings bank and affirmed the Board's decision. (R. 483.)

SUMMARY OF ARGUMENT.

No question of importance to the public or of general interest is involved in this case and for that reason alone certiorari should be denied. Although Petitioner has asserted that a Constitutional question is present, that question, if it exists at all, was raised by the Court below not in this case but in the case of the Hamilton National Bank.

The decision of the Court of Appeals in this case is sound, as the evidence showed conclusively that Respondent The Citizens Bank of Washington was in fact an incorporated savings bank paying interest to its depositors. It is not true, as urged by Petitioner, that a proper consideration of the case of *District of Columbia* v. *Hamilton National Bank*, No. 385, October Term, 1949, is inseparable from the consideration of this case. Nevertheless, the decision of the Court of Appeals is likewise sound in the *Hamilton National Bank* case, and that case presents no question which should be reviewed by this Court. Certiorari should be denied in both cases.

ARGUMENT.

I.

The Question Involved in this Case is Not of Importance to the Public Nor of General Interest.

Petitioner's brief argues only one point, namely, that the question presented is important. Admittedly, the question is important to the Petitioner and to the Respondents, but that is not a valid ground for certiorari. No matter how important the question may be to the parties to this litigation, it is not of general importance because it has to do only with the construction and the application of a purely local statute for the taxation of banks engaged in business in the District of Columbia. No Federal question of substance, involving the construction or application of the constitution or of a Federal statute of general applicability, is involved in this case, or even in the allegedly related case of *District of Columbia* v. *Hamilton National Bank*, No. 385, October Term, 1949 in this Court, for reasons which we shall hereinafter set forth. (*post*, pp. 13-14.)

Some years ago the United States Court of Appeals for the District of Columbia Circuit decided another case involving the same statute which is involved in the instant case. Although the question in that case was different from

that here involved, the question was one of great importance to the District of Columbia as well as to all of the local banks. Nevertheless, this Court refused to allow certiorari. *District of Columbia* v. *Riggs National Bank*, 58 App. D. C. 349, 30 F. 2d 873, decided February 4, 1929; cert. den. 279 U. S. 846, 49 S. Ct. 343. The question in the present case is of no greater public interest, and the petition for certiorari should be denied in conformity with the uniform rule established by this Court in the decision of many cases.

II.

None of the Reasons Relied on by Petitioner for Allowance of the Writ is Valid.

The Petition for Certiorari in this case assigns four reasons relied on for allowance of the writ. These reasons, briefly summarized, are (1) that the Court below decided a question of substance relating to the construction and application of statutes enacted by the Congress and the application of the Constitution of the United States, and that these matters have not been, and should be, settled by this Court; (2) that the Court below disposed of eight cases in one opinion and in its opinion did not give proper effect to the decisions of this Court with respect to the legislative power of Congress; (3) that the question presented is applicable to determining the constitutionality of every statute enacted by Congress in the exercise of its exclusive jurisdiction to legislate for the District of Columbia; and (4) that the question is one of general importance.

One of the four reasons advanced by Petitioner has been considered and answered under Point I above. There is no need to repeat that discussion under this Point, where the remaining reasons assigned by Petitioner in asking for the writ are considered.

Manifestly, the fact that the Court below disposed of eight cases in one opinion is no ground for certiorari. Petitioner's brief fails to disclose any decisions of this Court as to which the Court below failed to give proper effect

with respect to the legislative power of Congress. Only five decisions of this Court have been referred to in Petitioner's brief. One of those decisions is *Helvering* v. *Lerner Stores Corporation,* 314 U. S. 463, which is cited by Petitioner apparently in support of the proposition that there is no "equal protection of the laws" express or implied in the Fifth Amendment. (See Petitioner's Brief, p. 17, note 7.) Whether or not "equal protection of the laws" is express or implied in the Fifth Amendment has nothing whatever to do with the decisions of the Board of Tax Appeals and the Court of Appeals that this Respondent, The Citizens Bank of Washington, was upon the evidence developed by the record an incorporated savings bank paying interest to its depositors within the meaning of the taxing statute as consistently construed by the administrative authorities of the District of Columbia for a period of more than forty years. (R. 481.) The reference by the Court of Appeals to the requirements of the Fifth Amendment related exclusively to the case of the Hamilton National Bank.

The only other decisions of this Court referred to in Petitioner's brief are *Frost* v. *Wenie,* 157 U. S. 46; *United States* v. *Henderson,* 78 U. S. (11 Wall.) 652; *Wilmot* v. *Mudge,* 103 U. S. (13 Otto) 217; and *Wood* v. *United States,* 41 U. S. (16 Pet.) 342, all of which are cited apparently in support of the proposition that repeals by implication are not favored, and that a general statute, without negative words, will not repeal particular provisions of a former statute, unless the two acts are irreconcilably inconsistent. (See Petitioner's brief, p. 19, note 8.) Nobody can have any quarrel with such elementary principles, but they simply do not have any application to this case. They have absolutely nothing whatever to do with the decisions of the Board and of the Court below that upon the facts of this case this Respondent, The Citizens Bank of Washington, was an incorporated savings bank paying interest to its depositors and should be taxed accordingly.

Nowhere in Petitioner's brief is the soundness and validity of the decision of the Court below seriously attacked insofar as the decision relates to this Respondent and to the six other Respondents in this case. In the Petition in this case at page 8, Petitioner frankly states that Petitioner's principal complaint with the opinion of the Court of Appeals is that the effect of that opinion is to repeal Sec. 47-1701, D. C. Code, 1940 ed. under the provisions of which Petitioner and the Board of Tax Appeals taxed the Hamilton National Bank. (*District of Columbia* v. *Hamilton National Bank*, No. 385, October Term, 1949, in this Court) As will be shown hereinafter under another point (*post*, p. 14), Petitioner's complaint is groundless. However, even if the effect of the decision of the Court of Appeals were to repeal Sec. 47-1701 that would not in any way affect the soundness and the justice of the Court's decision that the Respondent and the six other Respondents in this case were incorporated savings banks paying interest to their customers and taxable accordingly.

The remaining reasons relied on by Petitioner for allowance of the writ are (1) that a substantial Constitutional question is involved, and (2) that a Constitutional question is presented applicable with respect to every statute enacted by Congress in the exercise of its exclusive jurisdiction to legislate for the District of Columbia. Any Constitutional question, if it exists at all, was raised only in reference to the case of the Hamilton National Bank. The only question presented in *this* case is whether this Respondent, The Citizens Bank of Washington, and the six other Respondents in *this* case in the light of the facts developed by the record were incorporated savings banks paying interest to their depositors and taxable accordingly.

III.

The Opinion of the Court of Appeals in this Case is Sound and Right.

As pointed out by the Court of Appeals in its opinion filed May 31, 1949 (R. 478), for many years the taxing authorities of the District of Columbia consistently classified certain banks other than national banks doing business in the District of Columbia as "incorporated savings banks paying interest to their depositors" under the second paragraph of Sec. 47-1703, D. C. Code, 1940 Ed., and collected taxes from them under the more favorable rate prescribed therein. The taxing authorities had been equally consistent in classifying all national banks doing business in the District of Columbia for taxation under Sec. 47-1701, D. C. Code, 1940 Ed., and in imposing upon them the higher rate and less favorable treatment prescribed by that section *irrespective of whether such national banks maintained savings departments and paid interest to depositors having savings accounts with them.* The Hamilton National Bank, being a national bank engaged in business in the District of Columbia with substantial savings accounts upon which it paid interest to its depositors, filed a petition with the Board of Tax Appeals for the District of Columbia for a reduction of gross earnings taxes assessed against it on the ground that the Assessor had refused to permit it to deduct fom its gross earnings a large sum paid as interest to its savings depositors before applying to its gross earnings the tax rate fixed by Sec. 47-1701. The Board of Tax Appeals affirmed the Assessor, whereupon a petition for review was filed with the United States Court of Appeals for the District of Columbia Circuit. In deciding that case, *Hamilton National Bank* v. *District of Columbia*, 81 U. S. App. D. C. 200, 156 F. 2d 843, decided June 28, 1946, the Court of Appeals simply held that the ascertainment of whether a bank was a national bank or other than a national bank was not a proper method of determining whether the bank was or was not an incorporated savings

bank since, as far as savings deposits were concerned, there was no difference between national banks and state banks. The Court said that an administrative officer could not restrict a statutory term such as "incorporated savings bank" by a definition having no relation to savings deposits or accounts and could not eliminate, by administrative definition, from the statutory provision for institutions identical in all respects related to savings deposits with institutions included in his definition, and that any attempt to do so was invalid and not in harmony with the statute. The Court pointed out that historically there was no incongruity in the District of Columbia between a savings bank and a national bank. The Court reversed the decision of the Board of Tax Appeals and remanded the case with instructions to cancel the assessment unless the Assessor upon a re-examination of the entire subject of taxing banks removed the discriminations then existing.

It was not until after the decision by the Court of Appeals in the Hamilton National Bank case decided June 28, 1946, that any attempt was made by the taxing authorities to tax the Respondent The Citizens National Bank of Washington and the six other Respondents in this case other than as savings banks subject to tax under the second paragraph of Sec. 47-1703. On October 17, 1946, the taxing authorities of the District of Columbia rejected the returns made by this Respondent and the other Respondents in this case for the tax fiscal year 1945, and on that date the Assessor made additional assessments of gross earnings against all these Respondents based upon computation of tax at the rate of 6% without any deduction for interest paid to savings depositors. (R. 4-5.) From the assessment so made appeals were taken to the Board of Tax Appeals for the District of Columbia by Respondent The Citizens Bank of Washington and by the six other Respondents in this case. Those appeals had their culmination in the decision of the Court of Appeals which the petitioner now seeks to have reviewed by certiorari.

The printed record of almost five hundred pages in this case shows that a very thorough presentation was made to the Board of Tax Appeals for the District of Columbia. An exhaustive study and presentation was made of the legislative history of the statute involved and of its administrative interpretation over a period of more than forty years. Not only was the general factual background developed in the greatest detail, but the facts as to the nature of the business and operations of each individual bank were developed very fully by the evidence presented to the Board of Tax Appeals, which filed comprehensive and carefully prepared Findings of Fact and Conclusions of Law, and in addition thereto filed also a Memorandum (R. 22-26). The Memorandum of the Board of Tax Appeals summarizes (R. 24-26) the Board's reasons for holding that The Citizens Bank of Washington and the other six Respondents in this case were savings banks within the meaning of the second paragraph of Sec. 47-1703, D. C. Code, 1940 Ed. The salient facts found by the Board of Tax Appeals which justified its holding that this Respondent, The Citizens Bank of Washington, was an incorporated savings bank are set forth with appropriate record references in the Statement of the Case in this brief (*ante*, p. 3), and are not repeated here. The Board of Tax Appeals found also that facts in the cases of each of the other six Respondents entitled them also to be classed as incorporated savings banks within the meaning of the taxing statute.

At page 17 of the Petitioner's Brief, it is asserted that on the basis of the business done by them, the Respondents in this case do not come within the traditional meaning of the term "incorporated savings bank". However, the issue in this case was not whether the Respondents were incorporated savings banks within the *traditional* meaning of the term. The one and only issue in the case as it reached the Court of Appeals was whether these Respondents were incorporated savings banks paying interest to their depositors within the meaning of the second paragraph of Sec. 47-1703. On this issue, the Board of Tax Appeals decided

that, in the light of the legislative history of the statute and in the light also of its consistent interpretation by the governmental agency charged with the administration of the statute, these Respondents were properly taxable as incorporated savings banks, and the Court of Appeals affirmed the Board's decisions as to these Respondents.

Petitioner's position before the Court of Appeals was that there was no longer any bank or trust company in the District of Columbia properly classifiable as "an incorporated savings bank paying interest to its depositors". The Court of Appeals pointed out that this position would be correct only if a savings bank be thought of in the *traditional* sense of the term as an institution which *confines* its business to interest bearing savings department. The Court of Appeals then went on to point out also that in the light of the legislative history of the statute it was not true that Congress intended so to restrict the term, and that on the other hand there was clearly indicated a legislative intent not to apply the second paragraph of Sec. 47-1703 to *traditional* savings banks because there were no such savings banks in the District of Columbia when that section of the statute was enacted in 1904 and also because the banks at whose instance the statute was adopted were engaged in commercial banking as well as in receiving savings deposits. The Court of Appeals held that the administrative interpretation of the second paragraph of Sec. 47-1703 as applicable to commercial banks with substantial savings departments was to be given great weight. The decision of the Court of Appeals that this Respondent, The Citizens Bank of Washington, and the six other Respondents, were taxable under the second paragraph of Sec. 47-1703, is fully justified by the careful and logical statement of reasons set forth in the opinion of the Court. Consequently, there is not the slightest reason for reviewing that decision.

IV.

This Case is Not Inseparably Related to the Hamilton National Bank Case.

Petitioner has asserted that the consideration of this case is inseparable from a proper consideration of the case of the *District of Columbia* v. *Hamilton National Bank,* No. 385, October Term, 1949, and that, if for any reason the case of the Hamilton National Bank should be reviewed, then this case necessarily must be reviewed also. Petitioner is wrong. The two cases are not inseparable.

Whether the Hamilton National Bank is or is not entitled to be taxed as an incorporated savings bank within the meaning of the second paragraph of Sec. 47-1703 has no bearing whatever upon the classification of Citizens as coming within the provisions of that Section. The change of position by the taxing authorities of the District of Columbia following the case of *Hamilton National Bank* v. *District of Columbia*, 81 U. S. App. 200, 156 F. 2d 843, has been nothing more than a tactical maneuver on the part of the District in an endeavor to sustain a disputed assessment upon the Hamilton National Bank to the point where that bank could no longer claim discrimination. This was in effect admitted by one of Petitioner's witnesses at the hearing before the Board of Tax Appeals. This witness, who was a member of the Board of Appraisers, testified that the change of position resulting in the attempt to tax Citizens and certain other non-national banks at the higher rate under Section 47-1701 would not have been attempted for the fiscal year in question if it had not been thought necessary in order to remove the discrimination which the Court of Appeals found to be present. (R. 179.) In ordinary circumstances, therefore, this case would never have been provoked by Petitioner, much less appealed and attempted to be brought to this Court for review.

Nowhere in the Petition for Certiorari or in Petitioner's brief does Petitioner argue directly that the decision insofar as it affected Citizens and the other Respondents in this case was either inherently or basically wrong. Indeed, the only reason suggested by Petitioner for reviewing the case involving Citizens is that the discrimination which the Court of Appeals found existing in the Hamilton National Bank could be eliminated by taxing Citizens and the other Respondents in this case under Sec. 47-1701 despite the utter lack of any change in the statute or in the nature of the business operations of these Respondents which would justify taxing them at the higher rate.

Petitioner has misconstrued the effect of the opinion of the Court of Appeals so far as it relates to the Hamilton National Bank. The Court of Appeals did not decide that Sec. 47-1701 so far as it taxed the gross earnings of banks in the District of Columbia had been repealed either expressly or by implication. All that the Court decided was that in view of the established fact that the Hamilton National Bank had substantial savings accounts on which it paid interest to its depositors, it was entitled to be taxed according to the second paragraph of Section 47-1703 along with non-national banks engaged in the savings bank business. The Court did not strike down Sec. 47-1701 or hold it to be unconstitutional. Any national bank in the District of Columbia not engaged in the savings bank business would be taxable under Sec. 47-1701, as would also any non-national bank in the District of Columbia similarly situated. At the time of the enactment of the taxing statute in question and for many years thereafter national banks did not engage in the savings bank business. The Court of Appeals in the case of the Hamilton National Bank simply held that when that bank engaged in the savings bank business and became in effect also an incorporated savings bank, it was entitled to be taxed as any other incorporated savings bank.

No Constitutional question is really involved in the case of the Hamilton National Bank. The Court of Appeals

simply held that a national bank which was engaged in business in the District of Columbia and which by reason of the nature of its business operations met the statutory definition of an incorporated savings bank was entitled to be taxed accordingly and that an administrative officer could not restrict a statutory term such as "incorporated savings bank" by a definition having no relation to savings deposits or accounts because any attempt to do so would be invalid *as not in harmony with the statute.* The decision was not based upon any application of the Fifth Amendment or of any other Constitutional provision. The Court of Appeals did not find it necessary to invoke any Constitutional provisions. The reference in the Court's opinion to the Fifth Amendment was unnecessary to the decision and is purely dictum. Accordingly, there is no valid reason for reviewing either the Hamilton National Bank case or this case.

CONCLUSION.

It is submitted that this case lacks utterly any showing of grounds for the issuance by this Court of the writ of certiorari. It is clear that the decision of the Court of Appeals is right both in this case and in the case of the Hamilton National Bank and that certiorari should be denied in both cases.

Respectfully submitted,

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Washington, D. C.,
November 23, 1949.